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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,535

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Philippe Bourgoïn

102792-402 (11019P1)

1538

27389 7590 12/14/2007  
NORRIS, MCLAUGHLIN & MARCUS  
875 THIRD AVE  
18TH FLOOR  
NEW YORK, NY 10022

EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

12/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/521,535

Applicant(s)

BOURGOIN ET AL.

Examiner

Lorna M. Douyon

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1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

1. This action is responsive to the amendment filed on September 21, 2007.
2. Claims 1-11, 13-18 are pending.
3. The rejection of claims 4-8, 14 and 18 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.
4. The rejection of claims 1-15, 17-18 under 35 U.S.C. 102(e) as being anticipated by Roberts et al. (US Patent No. 6,727,215) is withdrawn in view of Applicants' amendment and arguments therein.
5. The rejection of claim 16 under 35 U.S.C. 103(a) as being unpatentable over Roberts as applied to the above claims, and further in view of Edwards is withdrawn in view of Applicants' amendment and arguments therein.
6. Claims 1-7, 9-11, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (GB 2,358,382), hereinafter "Edwards" for the reasons set forth in the previous office action. In addition, Edwards teaches, in another embodiment, multi-compartment capsular containers as shown in Figures 10A and 10B (see Figures and page 66, lines 4-6). The container in Figure 10A is made in three parts and four in Figure 10B, and in each case, there is a single cap portion (132) and a plurality of body portions (as 131), where the body portions will fit tightly inside the open

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mouth of the next body portion, much like in Figure 8 the body 111 fits inside the cap 112 (see page 66, lines 8-17). As shown (in Figure 10A), when the first (outer) body part 131 has been filled with product A (which reads on the first composition and first compartment of the present claims), it may then be closed by the second (inner) body part 131 within it, and that second body part 131 may then be filled with product B (reads on the sealing member comprising second compartment containing a second composition), the cap 132 placed in position, and the three parts welded together at the same time (see page 66, lines 19-24). Hence, Figures 10A and 10B, likewise read on the present claims.

7. Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards as applied to the above claims, and further in view of Roberts for the reasons set forth in the previous office action.

### ***Response to Arguments***

8. Applicants' arguments filed September 21, 2007 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Edwards, Applicants argue that "Edwards provides rigid, injection molded articles which are easily formed into containers having a plurality of compartments separated by one or more dividing walls, which compartments may be filled with different materials, and which plurality of compartments may be easily sealed by the use of a closure as tops of the dividing wall

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or walls, and the edge of the sidewalls of the receptacle part all terminate in the same plane. Thus the closure is planar in construction, and acts as a 'lid' for sealing the one or more compartments in such a container. That being said it is the applicant's position that the Edwards document does not render the subject matter of the current claims as being obvious."

The Examiner respectfully disagrees with the above argument because, even though the closure is planar in construction, as in Figures 4 and 5, please note that "compartment 22" (which reads on second compartment of the present claims) in Figure 4 "partially seals" compartments 24 and 26 (which reads on the first compartment(s) of the present claims). In addition, this is not the only embodiment disclosed by Edwards. As stated above, Edwards teaches another embodiment as shown in Figures 10A and 10B. Looking at Figure 10A, the bottom compartment 131 which contains composition B corresponds to the first compartment and first composition, respectively. The upper compartment 131 which contains composition A corresponds to the second compartment and second composition, respectively. It is seen from the figure that the upper compartment 131 containing composition A seals the bottom compartment and composition B, and this reads on the requirements of present claim 1.

With respect to the obviousness rejection of claim 8 based upon Edwards in view of Roberts, Applicants argue that the instant claim is dependent upon claim 1 and incorporates by reference the prior remarks to Edwards.

The above response to Edwards applies here as well.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/  
Primary Examiner  
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